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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-207853; B-207969 **DATE:** April 5, 1983

MATTER OF: Association of Soil and Foundation Engineers

DIGEST:

1. Complaint with respect to procurement practices followed by state in procuring site survey will not be considered where no Federal funding is involved.
2. Since the protester has not shown that second grantee state's procurement of soil engineer's services was legally improper, its complaint is denied.

The Association of Soil and Foundation Engineers (ASFE) complains of two allegedly improper procurements for site surveys in connection with construction for National Guard Armories. One of the procurements was conducted by the State of Florida Department of Military Affairs; the other, by the Montana Army National Guard.

According to ASFE, the procurements are defective because they involve the selection of a professional engineering firm on an improper "bid basis." Both procurements, ASFE says, require "the involvement of a registered professional engineer." ASFE maintains that the law or settled practice in Florida and Montana requires that the selection of a professional engineer be based on quality rather than on price.

ASFE points out that to qualify for Federal funding the states must comply with regulations of the National Guard Bureau (NGB), Departments of the Army and Air Force. Section III, paragraph 21 of National Guard Regulation (NGR) 415-5 requires that states seeking funding for projects prepare a site survey report, which must include a certificate of soil bearing capacity "signed by the qualified soils engineer preparing the report." Under section II, paragraph 12b, the Federal Government may pay for all or a portion of the cost of such a survey, but it will not

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pay more than an apportioned share of the cost of the lowest priced acceptable proposal received after "competitive proposals from qualified soil-site investigation companies normally engaged in this type work" have been solicited.

According to ASFE, the fact that a qualified soils engineer must assume responsibility for the site survey indicates that engineering services are being sought. In ASFE's opinion, the states should be required to procure such services by following the procedure established in the Brooks Act, 40 U.S.C. § 514 et seq. (1976), which provides that Federal agencies should initially select A-E firms based on their qualifications rather than on the basis of price. See Association of Soil and Foundation Engineers-Reconsideration, B-199548.2, August 13, 1982, 82-2 CPD 128.

We dismiss ASFE's complaint with respect to the Florida procurement and deny the complaint regarding the Montana procurement.

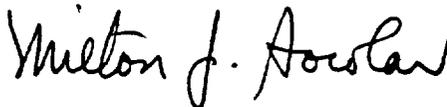
First, we point out that, although ASFE has framed both complaints as protests, they are not protests because direct Federal procurements are not involved. Rather, Federal funding is being provided under 10 U.S.C. § 2233 (1976) to the State of Montana, while the Florida procurement will not involve the expenditure of any Federal funds. Under these circumstances, we will review the Montana procurement under our public notice, "Review of Complaints Concerning Contracts under Federal Grants," 40 Fed. Reg. 42406 (1975), since Montana here is, in effect, a grantee of Federal funds. See E. P. Reid, Inc., B-189944, May 9, 1978, 78-1 CPD 346. Since, however, there are no Federal funds involved in the Florida procurement (B-207853), ASFE's complaint as to that procurement is dismissed. Collins Construction and Management Company, B-197211, June 17, 1980, 80-1 CPD 421.

There are several steps involved in a state's obtaining Federal support for Army National Guard construction projects. One of these is obtaining and submitting to the National Guard a site survey report (an investigation of surface and subsurface conditions existing at the proposed construction site) prior to the start of design of preliminary plans for the project. The site survey report contract is at issue here.

NGR 415-5, paragraph 2, specifies that these projects "will be accomplished by State contracts executed by State contracting officers in conformance with State law." This provision of the regulation implements 10 U.S.C. § 2237(b), which provides that these contracts "shall be done according to the laws of [the] jurisdiction and under the supervision of its officials * * *." Thus, it is local law and not the Brooks Act (which we have previously held is not applicable to Federal grantees, see Sieca, Inc., 57 Comp. Gen. 251 (1980), 80-1 CPD 113) nor some other Federal statute which is to govern the award of the contract in question.

ASFE has pointed to nothing in Montana law which precludes, in the words of NGR 415-5, the receipt of "competitive proposals [including price] from qualified soil-site investigation companies * * *," and Montana officials appear to have proceeded in accordance with that understanding of their own law. For example, the services were initially solicited by a "call for bids," a procurement procedure that we assume is similar to Federal formal advertising procedures. After learning of objections from A-E firms and the Consulting Engineers Council of Montana, the call for bids was withdrawn and a request for proposals was issued. The request stated that the proposals would be reviewed and a firm would be solicited to enter contract negotiations. Two of the three engineering firms responding submitted proposals including cost. State officials have accepted this procedure as being consistent with the State negotiation statute concerning the award of A-E contracts.

Under the circumstances, we find neither the conduct of the Montana procurement nor the application of the provisions of NGR 415-5 to this procurement to be inconsistent with 10 U.S.C. § 2237(b). Therefore, the complaint is denied.

for 
Comptroller General
of the United States